



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R1–ES–2016–0006; FXES11130900000C6–167–FF09E42000]**

**RIN 1018–BB28**

**Endangered and Threatened Wildlife; Technical Corrections for Eight Wildlife Species on the List of Endangered and Threatened Wildlife**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Direct final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the revised taxonomy of eight wildlife species under the Endangered Species Act of 1973, as amended (Act). We are revising the List of Endangered and Threatened Wildlife to reflect the current scientifically accepted taxonomy and nomenclature of these species.

**DATES:** This rule is effective **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further action, unless significant adverse comment is received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If significant adverse comment is received regarding taxonomic changes for any of these species, we will publish in the **Federal Register** a timely withdrawal of the rule for the appropriate species.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Follow the instructions for submitting comments to FWS–R1–ES–2016–0006, which is the docket number for this rulemaking.

- *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2016–0006; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041–3803.

See **Public Comments**, below, for more information about submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Marilet Zablan, Program Manager for Restoration and Endangered Species Classification, U.S. Fish and Wildlife Service, Pacific Regional Office, Ecological Services, 911 NE 11<sup>th</sup> Avenue, Portland, OR 97232; telephone 503–231–6131. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance 24 hours a day, 7 days a week.

#### **SUPPLEMENTARY INFORMATION:**

##### **Purpose of Direct Final Rule and Final Action**

The purpose of this direct final rule is to notify the public that we are revising the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (CFR) at §17.11(h) (50 CFR 17.11(h)) to reflect the scientifically accepted taxonomy and nomenclature of eight wildlife species listed under section 4 of the Act (16 U.S.C. 1531 *et seq.*). These changes to the List of Endangered and Threatened Wildlife reflect the most recently accepted scientific names in accordance with 50 CFR 17.11(b).

We are publishing this rule without a prior proposal because this is a noncontroversial action that is in the best interest of the public and should be undertaken in as timely a manner as possible. This rule will be effective, as published in this document, on the effective date specified in **DATES**, unless we receive significant adverse comments on or before the comment due date specified in **DATES**. Significant adverse comments are comments that provide strong justification as to why this rule should not be adopted or why it should be changed.

If we receive significant adverse comments regarding the taxonomic changes for any of these species, we will publish a document in the **Federal Register** withdrawing this rule for the appropriate species before the effective date, and we will publish a proposed rule to initiate promulgation of those changes to 50 CFR 17.11(h).

### **Public Comments**

You may submit your comments and materials regarding this direct final rule by one of the methods listed in **ADDRESSES**. Please include sufficient information with your comments that will allow us to verify any scientific or commercial information you include. We will not consider comments sent by e-mail or fax, or to an address not listed in **ADDRESSES**.

We will post all comments on *<http://www.regulations.gov>*. Before including your address, phone number, e-mail address, or other personal information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your

comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we use in preparing this direct final rule, will be available for public inspection on the Internet at <http://www.regulations.gov> or by appointment, during normal business hours, at the U.S.

Fish and Wildlife Service office listed in **FOR FURTHER INFORMATION**

**CONTACT.** Please note that comments posted to <http://www.regulations.gov> are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission. Information regarding this rule is available in alternative formats upon request (see **FOR FURTHER INFORMATION CONTACT**).

For information pertaining to specific species, please contact Kristi Young, Fish and Wildlife Biologist, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Room 3–122, Honolulu, HI 96813; telephone 808–792–9400.

## **Background**

50 CFR 17.11(b) and 17.12(b) direct us to use the most recently accepted scientific name of any wildlife or plant species, respectively, that we have determined to be an endangered or threatened species. Using the best available scientific information, this direct final rule documents taxonomic changes of the scientific names to seven entries under “Birds” on the current List of Endangered and Threatened Wildlife (50 CFR 17.11(h)). In addition, this rule corrects a previous error on the List by splitting one entry

into two separate entries and updates the scientific names for those two entries, for a total of eight entries updated by this rule. The basis for these taxonomic changes is supported by published studies in peer-reviewed journals. Accordingly, we revise the scientific names of these species under section 4 of the Act (16 U.S.C. 1531 *et seq.*) as follows:

<b>Species Name as Currently Listed</b>	<b>Corrected Species Name</b>
Newell’s Townsend’s shearwater ( <i>Puffinus auricularis newelli</i> )	Newell’s shearwater ( <i>Puffinus newelli</i> )
Oahu elepaio ( <i>Chasiempis sandwichensis ibidis</i> )	Oahu elepaio ( <i>Chasiempis ibidis</i> )
Kauai ‘akialoa (honeycreeper) ( <i>Hemignathus procerus</i> )	Kauai akialoa ( <i>Akialoa stejnegeri</i> )
‘akiapola‘au (honeycreeper) ( <i>Hemignathus munroi</i> )	akiapolaa ( <i>Hemignathus wilsoni</i> )
nukupu‘u (honeycreeper) ( <i>Hemignathus lucidus</i> )	Kauai nukupuu ( <i>Hemignathus hanapepe</i> )
	Maui nukupuu ( <i>Hemignathus affinis</i> )
Hawaii ‘akepa (honeycreeper) ( <i>Loxops coccineus coccineus</i> )	Hawaii akepa ( <i>Loxops coccineus</i> )
Maui ‘akepa (honeycreeper) ( <i>Loxops coccineus ochraceus</i> )	Maui akepa ( <i>Loxops ochraceus</i> )

We make these changes to the List of Endangered and Threatened Wildlife to reflect the most recently accepted scientific names in accordance with 50 CFR 17.11(b). As revised, the common names omit Hawaiian orthographic characters and parenthetical descriptors of bird groups (e.g. “‘Akiapola’au (honeycreeper)”), which have heretofore been used inconsistently and sometimes inaccurately in the List of Endangered and Threatened Wildlife.

Of the species that are the subjects of this rule, only the Oahu elepaio (*Chasiempis ibidis*) has designated critical habitat. For clarity and consistency, in this direct final rule, we are revising the heading of the critical habitat designation for the Oahu elepaio at 50 CFR 17.95(b) to reflect its corrected species name.

### **Taxonomic Classification**

#### *Newell’s shearwater*

The Newell’s Manx shearwater (*Puffinus puffinus newelli*), a seabird native to the Hawaiian Islands, was listed as threatened on October 28, 1975 (40 FR 44149; September 25, 1975). At that time the taxon *newelli* was treated as a subspecies of the Manx shearwater (*Puffinus puffinus*), following Murphy (1952, pp. 1-21) who had recognized eight subspecies worldwide (*puffinus* [North Atlantic], *mauretanicus* [western Mediterranean], *yelkouan* [eastern Mediterranean], *gavia* [New Zealand], *huttoni* [New Zealand], *newelli* [Hawaiian Islands], *auricularis* [Revillagigedo Islands, Mexico], and *opisthomelas* [Baja California]).

Subsequently the American Ornithologists’ Union (AOU) (1983, pp. 24-25) restricted the Manx shearwater to the North Atlantic and Mediterranean forms, recognizing

*newelli* and *auricularis* as subspecies of the distinct species Townsend's shearwater (*Puffinus auricularis*). The List of Endangered and Threatened Wildlife currently follows this taxonomy, identifying the listed entity as Newell's Townsend's shearwater (*P. auricularis newelli*).

The Hawaiian and Revillagigedo Islands populations differ substantially from one another in their plumage (Howell *et al.* 1994, pp. 171-176), breeding chronology (Ainley *et al.* 1997), and foraging ecology (Spear *et al.* 1995, pp. 621-637). Consequently, the AOU now considers Newell's shearwater (*Puffinus newelli*) to be a full species distinct from Townsend's shearwater (*Puffinus auricularis*) (Chesser *et al.* 2015, pp. 751-752). This taxonomic change does not affect the range or threatened status of the Newell's shearwater.

#### *Oahu elepaio*

The elepaio are a group of three forest songbird species endemic to the Hawaiian Islands. The forms on Hawaii, Oahu, and Kauai were originally described as separate species (*Chasiempis sandwichensis*, *C. ibidis*, and *C. sclateri*, respectively), but were subsequently combined into a single species under *C. sandwichensis* (Bryan and Greenway 1944, pp. 124-125). The AOU (1982) followed this approach. The Oahu elepaio was listed as endangered on May 18, 2000 (65 FR 20760; April 18, 2000), under the scientific name *Chasiempis sandwichensis ibidis*.

The three island forms of elepaio differ substantially in their vocalizations (VanderWerf 2007) and their morphology and ecology (Conant *et al.* 1998; VanderWerf 2012, 2015). Analysis of mitochondrial DNA further indicates that the three island forms

have diverged genetically and do not share haplotypes (VanderWerf *et al.* 2010).

Consequently the AOU has now restored the three subspecies of elepaio to species level (Chesser *et al.* 2010). Thus the scientific name of the Oahu elepaio is now *Chasiempis ibidis*. This taxonomic change does not affect the range or endangered status of the Oahu elepaio.

#### *Akialoa, Akiapolaau, and Nukupuu*

The genus *Hemignathus* was formerly considered to include four species of forest songbirds endemic to the Hawaiian islands: Hawaiian akialoa (*H. obscurus* [extinct]; Hawaii, Oahu, and Lanai), Kauai akialoa (*H. procerus*; Kauai), nukupuu (*H. lucidus*; Kauai, Oahu [where extinct], and Maui), and akiapolaau (*H. wilsoni*; Hawaii) (Amadon 1950, pp. 168-169). On March 11, 1967, the Kauai akialoa (*Hemignathus procerus*), akiapolaau (*Hemignathus wilsoni*) (syn. *H. munroi*), and the Kauai nukupuu (*H. lucidus hanapepe*) were determined under the Endangered Species Preservation Act to be threatened with extinction (32 FR 4001). On October 13, 1970, these species (including both the Kauai and Maui nukupuu) were included on the United States List of Endangered Native Fish and Wildlife (35 FR 16047).

The AOU (1982, p. 16CC) transferred three additional species to *Hemignathus* that had formerly been classified in the genus *Loxops*: common amakihi (*H. virens*; all major islands), anianiau (*H. parvus*; Kauai), and greater amakihi (*H. sagittirostris* [extinct]; Hawaii). The common amakihi was subsequently split into three species: Hawaii amakihi (*H. virens*), Oahu amakihi (*H. chloris*), and Kauai amakihi (*H. kauaiensis*) (AOU 1995, p. 828). None of these species has been listed under the Act.



Olson and James (1988, p. 13) noted that the Kauai akialoa was first described by Wilson in 1889, under the name *Hemignathus stejnegeri*. The name *Hemignathus procerus* was first used by Cabanis in 1890; thus *stejnegeri* has priority under the rules of zoological nomenclature. This change was subsequently adopted by the AOU (1998, p. 675).

The akialoa species classification was rearranged by the AOU (1997, p. 548; 1998, p. 675) to elevate the Hawaii subspecies (*obscurus*) to a full species (lesser akialoa, *Hemignathus obscurus* [extinct, not listed]) and include the subspecies on Kauai (*stejnegeri* [endangered]), Oahu (*ellisianus* [extinct, not listed]), and Lanai (*lanaiensis* [extinct, not listed]) within a different species (greater akialoa, *H. ellisianus*).

A variety of genetic and morphological data indicates that the genus *Hemignathus* in the broad sense is not a monophyletic group (Fleischer *et al.* 1998, pp. 533-545; James 2004, p. 241; Reding *et al.* 2008, pp. 221-224; Lerner *et al.* 2011, p. 1841). Consequently, the AOU has now distributed these species among several genera. The anianiau (*H. parvus*) was transferred to the genus *Magumma* (Banks *et al.* 2008, p. 765), the greater amakihi (*H. sagittirostris*) to the genus *Viridonia*, the common amakihi group (*H. virens*, *H. chloris*, and *H. kauaiensis*) to the genus *Chlorodrepanis*, and the akialoa group (*H. obscurus* and *H. ellisianus*) to the genus *Akialoa*, while the akiapolaau (*H. wilsoni*) and nukupuu (*H. lucidus*, *H. hanapepe*, and *H. affinis*) remain in the genus *Hemignathus* (Chesser *et al.* 2015, pp. 758-760).

Although the akiapolaau remains in the genus *Hemignathus*, its species name was changed as an indirect result of the above generic split (Olson and James 1988, p. 13). The

akiapolaau was originally described in November 1893, under the name *Heterorhynchus wilsoni* (Rothschild 1893a, pp. 97-99). However, 6 months earlier in May 1893, the Maui race of amakihi (now *Chlorodrepanis virens wilsoni*) had been described under the name *Himatione wilsoni* (Rothschild 1893b, p. 42). Thus, during the period from 1982 to 2015, when the amakihi and the akiapolaau were both included within the genus *Hemignathus*, the species name *wilsoni* was unavailable to be used for the akiapolaau, and the alternative name *Hemignathus munroi* was used. However, with the transfer of the common amakihi group to *Chlorodrepanis*, the species name *wilsoni* again has priority for the akiapolaau. Thus, the AOU has again adopted the name *Hemignathus wilsoni* for the akiapolaau (Chesser *et al.* 2015, p. 758). This taxonomic change does not affect the range or endangered status of the akiapolaau.

Because the four historically known subspecies of akialoa are now known from fossil evidence to have been sympatric with at least two additional akialoa species, Olson and James (1995, pp. 384-385) and Pratt (2014, pp. 9-10) recommended that they be conservatively treated as full species. Consequently, the AOU has elevated the three subspecies of the greater akialoa to species level: Kauai akialoa (*Akialoa stejnegeri*), Oahu akialoa (*A. ellisiana* [extinct]), and Maui-nui akialoa (*A. lanaiensis* [extinct]) (Chesser *et al.* 2015). This taxonomic change does not affect the range or endangered status of the Kauai akialoa (*Akialoa stejnegeri* (syn. *Hemignathus procerus*)).

Plumage differences among the three taxa of nukupuu on Kauai, Oahu, and Maui (*hanapepe*, *lucidus*, and *affinis*) are comparable to those existing among other species groups of Hawaiian honeycreepers (Pratt *et al.* 2001; Pratt and Pratt 2001, p. 75).

Consequently, the AOU has elevated these three taxa from subspecies to species level: Kauai nukupuu (*Hemignathus hanapepe*), Oahu nukupuu (*H. lucidus*) (extinct), and Maui nukupuu (*H. affinis*) (Chesser *et al.* 2015, pp. 759-760).

As noted above, the original 1967 listing rule covered only the Kauai nukupuu (32 FR 4001), and a later 1970 rule listed both the Kauai and Maui nukupuu (35 FR 16047). However, the current List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) erroneously describes the listed entity as “nukupuu (honeycreeper)” and “*Hemignathus lucidus*,” with a single entry rather than separately specifying the Kauai and Maui nukupuu as stated in the 1970 listing rule. No **Federal Register** document describes the basis on which the listed entity was changed from the Kauai and Maui nukupuu to a collective listing of the entire species. In particular, the current entry at 50 CFR 17.11(h) implicitly includes the Oahu nukupuu within the listed entity although no listing rule has ever specifically listed it as endangered. Thus, the current nukupuu entry at 50 CFR 17.11(h) does not accurately represent the 1970 listing. Moreover, our most recent recovery plan and 5-year review (USFWS 2006, pp. 89-95; 2010a) reference the Kauai nukupuu and Maui nukupuu individually. Given that the AOU supports elevation of the three nukupuu subspecies to species level, it is consistent both with the intent of the original listing rules and with current scientific information to correct this error in the List of Endangered and Threatened Wildlife and treat the Kauai nukupuu (*Hemignathus hanapepe*) and Maui nukupuu (*Hemignathus affinis*) as distinct listed entities. This approach is also consistent with the treatment of the Laysan finch (*Telespyza cantans*) and Nihoa finch (*T. ultima*), which were similarly listed as a pair of taxa in 1970 (35 FR 16047) and have since been

considered consistently as distinct listed entities. The taxonomic change from subspecies to species level does not affect the range or endangered status of the Kauai nukupuu or the Maui nukupuu. Because the recognition of Kauai nukupuu and Maui nukupuu as distinct listed entities does not alter the listing decision from the 1970 listing rule, but simply corrects an error at 50 CFR 17.11(h), it requires no formal status review.

#### *Hawaii and Maui Akepa*

The Hawaii akepa (*Loxops coccineus coccineus*) and Maui akepa (*Loxops coccineus ochraceus*) are forest songbirds that were originally included on the United States List of Endangered Native Fish and Wildlife on October 13, 1970 (35 FR 16047). The akepa subspecies on Oahu (*L. c. wolstenholmei*) and Kauai (*L. c. caeruleirostris*) were not listed at that time. Subsequently, the Kauai population has been determined to be a separate species (the akekee, *Loxops caeruleirostris*) (AOU 1991, pp. 753-754), and it was listed as an endangered species on May 13, 2010 (75 FR 18960; April 13, 2010). The Oahu akepa was last reported in the wild in 1976, and is likely extinct, but has not been listed under the Act.

Pratt (2014, p. 10) found that the Hawaii, Maui, and Oahu populations of the akepa were distinct at the species level based on molecular data and differences in plumage and nest placement. Based on this research, the AOU (Chesser *et al.* 2015, p. 760) accepts the Hawaii akepa (*Loxops coccineus*), the Maui akepa (*Loxops ochraceus*), and the Oahu akepa (*Loxops wolstenholmei*) as distinct species. The taxonomic change does not affect the range or endangered status of either the Hawaii akepa or the Maui akepa.

#### **Required Determinations**

### *National Environmental Policy Act*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations issued pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (43 FR 49244).

### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us to revise this rule, your comments should be as specific as possible.

### **References Cited**

A complete list of the referenced materials is available upon request from the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

### **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### **Regulation Promulgation**

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### **PART 17—ENDANGERED AND THREATENED WILDLIFE**

1. The authority citation for part 17 continues to read as follows:

**AUTHORITY:** 16. U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, under BIRDS, by:

- a. Removing the entries for “ʻAkepa, Hawaii (honeycreeper)”, “ʻAkepa, Maui (honeycreeper)”, “ʻAkialoa, Kauai (honeycreeper)”, and “ʻAkiapolaʻau (honeycreeper)”;
  - b. Adding, in alphabetical order, entries for “Akepa, Hawaii”, “Akepa, Maui”, “Akialoa, Kauai”, and “Akiapolaau”;
  - c. Revising the entry for “Elepaio, Oahu”;
  - d. Removing the entry for “Nukupuʻu (honeycreeper)”;
    - e. Adding, in alphabetical order, entries for “Nukupuu, Kauai” and “Nukupuu, Maui”;
    - f. Removing the entry for “Shearwater, Newell’s Townsend’s”; and
    - g. Adding, in alphabetical order, an entry for “Shearwater, Newell’s”.

The revision and additions read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
BIRDS							
* * * * *							
Akepa, Hawaii	<i>Loxops coccineus</i>	U.S.A. (HI)	Entire	E	2	NA	NA
Akepa, Maui	<i>Loxops ochraceus</i>	U.S.A. (HI)	Entire	E	2	NA	NA
Akialoa, Kauai	<i>Akialoa stejnegeri</i>	U.S.A. (HI)	Entire	E	1	NA	NA
Akiapolaau	<i>Hemignathus wilsoni</i>	U.S.A. (HI)	Entire	E	1	NA	NA
* * * * *							
Elepaio, Oahu	<i>Chasiempis ibidis</i>	U.S.A. (HI)	Entire	E	696	17.95(b)	NA
* * * * *							
Nukupuu, Kauai	<i>Hemignathus hanapepe</i>	U.S.A. (HI)	Entire	E	1, 2	NA	NA
Nukupuu, Maui	<i>Hemignathus affinis</i>	U.S.A. (HI)	Entire	E	2	NA	NA



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Shearwater, Newell's	<i>Puffinus newelli</i>	U.S.A. (HI)	Entire	T	10	NA	NA
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\* \* \* \* \*

**§ 17.95 [Amended]**

3. Amend §17.95(b) by removing the heading “OAHU ELEPAIO (*CHASIEMPIS SANDWICHENSIS IBIDIS*)” and adding in its place the heading “OAHU ELEPAIO (*CHASIEMPIS IBIDIS*)”.

Dated: February 8, 2016

**Stephen Guertin**

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016-03256 Filed: 2/16/2016 8:45 am; Publication Date: 2/17/2016]